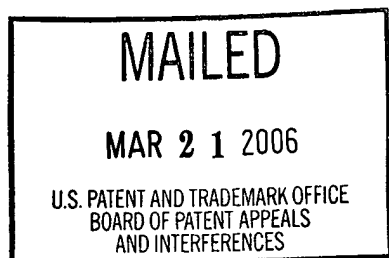


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JOHN PATRICK QUIGLEY and TERRY LUDWIG



Appeal No. 2005-2303
Application No. 09/848,413

ON BRIEF

Before FRANKFORT, CRAWFORD, and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-10 and 12-20, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a method and apparatus for latching a door against a frame. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The Applied Prior Art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hull et al. (Hull)	3,981,054	Sep. 21, 1976
Dreifert et al. (Dreifert)	5,370,428	Dec. 6, 1994
Brautigam	6,230,457	May 15, 2001

The Rejections

The following rejections are before us for review.¹

¹ The only ground of rejection restated in the answer is the rejection of claim 16 as being unpatentable over Dreifert in view of Brautigam. Normally, a rejection will be assumed to be withdrawn because of an examiner's failure to carry such rejection forward and to restate it in the answer. Ex parte Emm, 118 USPQ 180, 181 (Bd. App. 1957). In this case, however, the examiner's agreement on page 2 of the answer with appellants' statement of the issues in the brief, which includes whether claims 1, 2, 5-10, 12, 13, 15, 16 and 18-20 are unpatentable over Dreifert in view of Brautigam and further in view of case law and whether claims 3, 4, 14 and 17 are unpatentable over Dreifert in view of Brautigam and further in view of Hull and further in view of case law, implies that the examiner intended to carry forward all of the rejections made in the final rejection. Accordingly, in the interest of administrative efficiency and fairness to appellants, we have treated all of the rejections set forth in the final rejection as being carried over into the answer.

Claims 1, 2, 5-10, 12, 13, 15, 16 and 18-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dreifert in view of Brautigam "and further in view of case law."²

Claims 3, 4, 14 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dreifert in view of Brautigam and further in view of Hull.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the final rejection (mailed January 26, 2004) and answer (mailed September 22, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed June 22, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. For the reasons which follow, we cannot sustain the examiner's rejections.

Independent claim 1 requires a handle lever rotatably mounted to the door and "having a handle pin extending therefrom." Independent claim 12 requires "a rotating

² The case law relied upon by the examiner in the rejections is not, in fact, evidence and need not be included in the statement of the rejection.

handle having a handle pin extending therefrom." Claim 16, the final independent claim, requires a step of inserting "a handle pin mounted to a handle" into a second slot on the latch bar.

Even assuming that it would have been obvious, in view of the combined teachings of Dreifert and Brautigam, to pick and choose the particular reversals of parts required to meet the remainder of the limitations of claims 1, 12 and 16, including mounting the moving device 52, with its handle 50, on the sash (or door) and to provide the motion receiving pin 70, rather than the slot 66, on plate member 56, for engagement with a slot on the carrier 21, such pin would still be neither extending from the handle 50 nor mounted to the handle 50, as called for in claims 1, 12 and 16.

In light of the above, we cannot sustain the rejection of independent claims 1, 12 and 16, or claims 2, 5-10, 13, 15 and 18-20 depending therefrom, as being unpatentable over Dreifert in view of Brautigam. Inasmuch as the examiner's additional application of Hull does nothing to remedy the deficiency of the combination of Dreifert in view of Brautigam discussed above, it follows that we also cannot sustain the rejection of claims 3, 4, 14 and 17 as being unpatentable over Dreifert in view of Brautigam and Hull.

To summarize, the decision of the examiner to reject claims 1-10 and 12-20 under 35 U.S.C. § 103 is REVERSED.

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

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Page 6

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